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The Honorable Edward F. Shea

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

KEVIN CUNNINGHAM, et al.,

Plaintiffs,

v.

MISSION SUPPORT ALLIANCE,
LLC,

Defendant.

CASE NO. 4:18-CV-05060-EFS

DEFENDANT'S ANSWER TO
COMPLAINT

Defendant Mission Support Alliance, LLC (MSA or defendant), answers
plaintiffs' complaint as follows:

Preliminary Statement

1. Answering the allegations in paragraph 1 of plaintiffs' complaint,
MSA admits that the plaintiffs are or have been employed by the

1 company; however, defendant denies all other allegations of this
2 paragraph including any liability for any of the causes of action
3 alleged in the complaint.

4 **Jurisdiction and Venue**

5 2. Answering the allegations in paragraph 2 of plaintiffs' complaint,
6 defendant owes no obligation to respond to the allegations of this
7 paragraph insofar as they state legal conclusions. However, without
8 admitting liability or that the plaintiffs are proper plaintiffs for any or
9 all of the causes of action, defendant does not contest this Court's
10 jurisdiction over the action.

11 3. Answering the allegations in paragraph 3 of plaintiffs' complaint,
12 defendant owes no obligation to respond to the allegations of this
13 paragraph insofar as they state legal conclusions. However, without
14 admitting liability or that the plaintiffs are proper plaintiffs for any or
15 all of the causes of action, defendant does not contest that this Court is
16 a proper venue for the action.

17 **Parties**

18 4. Answering the allegations in paragraph 4 of plaintiffs' complaint,
19 defendant admits that the presently named individual plaintiffs were
20

1 employed by defendant and that the company's principal place of
2 business is in the Eastern District of Washington.

3 5. Answering the allegations in paragraph 5 of plaintiffs' complaint,
4 defendant admits that the documents attached to the complaint as
5 Exhibit A bear the individual, presently named, plaintiffs' names and
6 that they also appear to be signed; however, defendant denies all other
7 allegations of this paragraph.

8 6. Answering the allegations in paragraph 6 of plaintiffs' complaint,
9 defendant admits the allegations of this paragraph.

10 7. Answering the allegations in paragraph 7 of plaintiffs' complaint,
11 defendant admits that the plaintiffs are or have been employed by
12 MSA. MSA further admits that it is a limited liability company that
13 and avers that it was created to fulfill infrastructure and site support
14 services for the management and operation of the Hanford site
15 infrastructure and pursuant to its Mission Support Contract.

16 **Facts**

17 8. Answering the allegations in paragraph 8 of plaintiffs' complaint,
18 defendant owes no obligation to respond to the allegations of the first
19 sentence of this paragraph insofar as they state legal conclusions.
20

1 Defendant admits the allegations of the second sentence of this
2 paragraph with respect to the plaintiffs.

3 9. Answering the allegations in paragraph 9 of plaintiffs' complaint,
4 defendant owes no obligation to respond to the allegations of this
5 paragraph insofar as they state legal conclusions. However, defendant
6 admits that the plaintiffs are employees as that term is defined by the
7 FLSA, but avers that the plaintiffs are exempt from the coverage of
8 the FLSA's minimum wage and overtime requirements.

9 10. Answering the allegations in paragraph 10 of plaintiffs' complaint,
10 defendant owes no obligation to respond to the allegations of the first
11 sentence in this paragraph insofar as they state legal conclusions.
12 However, defendant does not contest that it may be an employer
13 covered by the FLSA with respect to employees who are covered by
14 the FLSA. The plaintiffs, however, are exempt from the FLSA's
15 coverage. Defendant admits that it is aware of the FLSA; however, in
16 so admitting, defendant avers that the FLSA's many provisions and
17 regulations thereunder are complicated and subject to interpretation as
18 documented in legions of cases on all aspects of its requirements.

19 11. Answering the allegations in paragraph 11 of plaintiffs' complaint,
20 defendant owes no obligation to respond to the allegations of the first

1 sentence in this paragraph insofar as they state legal conclusions.

2 However, defendant admits it is a covered enterprise under the FLSA.

3 12. Answering the allegations in paragraph 12 of plaintiffs' complaint,
4 defendant admits that the plaintiffs were, from time-to-time, assigned
5 to work 24-hour shifts associated with one of the platoons.

6 13. Answering the allegations in paragraph 13 of plaintiffs' complaint,
7 defendant admits that the plaintiffs were, from time-to-time, assigned
8 to work 24-hour shifts and that one or more of the plaintiffs may have
9 worked more than 40 hours in a given work week from time-to-time.

10 Defendant denies all other allegations of this paragraph.

11 14. Answering the allegations in paragraph 14 of plaintiffs' complaint,
12 defendant admits that the plaintiffs were, from time-to-time, assigned
13 to work 24-hour shifts and that one or more of the plaintiffs may have
14 worked more than 40 hours in a given work week from time-to-time.

15 Defendant denies all other allegations of this paragraph.

16 15. Answering the allegations in paragraph 15 of plaintiffs' complaint,
17 defendant owes no obligation to respond to the allegations of this
18 paragraph that state legal conclusions. However, defendant denies all
19 allegations of this paragraph and avers that the plaintiffs are exempt
20 under the FLSA and, further, that it paid plaintiffs in accordance with

1 the terms of a collective bargaining agreement negotiated by a union
2 on their behalf and, therefore, complied with the FLSA's overtime
3 requirements whether the plaintiffs are exempt or not.

4 16. Answering the allegations in paragraph 16 of plaintiffs' complaint,
5 defendant owes no obligation to respond to the allegations of this
6 paragraph that state legal conclusions. However, defendant denies all
7 allegations of this paragraph and avers that the plaintiffs are exempt
8 under the FLSA and, further, that it paid plaintiffs in accordance with
9 the terms of a collective bargaining agreement negotiated by a union
10 on their behalf and, therefore, complied with the FLSA's overtime
11 requirements whether the plaintiffs are exempt or not.

12 17. Answering the allegations in paragraph 17 of plaintiffs' complaint,
13 defendant states that the allegations of this paragraph are redundant
14 given the allegations of paragraphs 13 and 14. However, defendant
15 admits that the plaintiffs were, from time-to-time, assigned to work
16 24-hour shifts and that one or more of the plaintiffs may have worked
17 more than 40 hours in a given work week from time-to-time.

18 Defendant denies all other allegations of this paragraph.

19 18. Answering the allegations in paragraph 18 of plaintiffs' complaint,
20 defendant owes no obligation to respond to the allegations of this

1 paragraph insofar as they state legal conclusions. However, defendant
2 denies all allegations of this paragraph.

3 **Failure to Pay Overtime for All Hours Plaintiffs Work ABOVE 40 Hours in a**
4 **Workweek in Violation of Section 7(a) of the FLSA, 29 U.S.C. § 207(a)**

5 19. Answering the allegations in paragraph 19 of plaintiffs' complaint,
6 defendant incorporates its responses to paragraphs one through 18 in
7 their entirety by reference. Defendant notes that the plaintiffs appear
8 to have referred to "one (1) through twenty (20)" in error. Defendant's
9 responses to paragraph 19 and 20 are stated herein and below.

10 20. Answering the allegations in paragraph 20 of plaintiffs' complaint,
11 defendant owes no obligation to respond to the allegations of this
12 paragraph insofar as they state legal conclusions. However, defendant
13 denies that the FLSA requires employers to pay overtime
14 compensation at the rate of one and one-half times their regular rate of
15 pay in all instances including the instances alleged in this action.

16 21. Answering the allegations in paragraph 21 of plaintiffs' complaint,
17 defendant owes no obligation to respond to the allegations of this
18 paragraph insofar as they state legal conclusions. However, defendant
19 denies all allegations of this paragraph and avers that, although the
20 FLSA requires employers to pay overtime compensation at the rate of

one and one-half times their regular rate of pay in a number of
circumstances, such circumstances are not alleged in this action.

Defendant further avers that it paid plaintiffs in accordance with the
terms of a collective bargaining agreement negotiated by a union on
their behalf.

22. Answering the allegations in paragraph 22 of plaintiffs' complaint,
defendant owes no obligation to respond to the allegations of this
paragraph insofar as they state legal conclusions. However, defendant
denies all allegations of this paragraph and avers that it paid plaintiffs
in accordance with applicable law and further in accordance with the
terms of a collective bargaining agreement negotiated by a union on
their behalf.

23. Answering the allegations in paragraph 23 of plaintiffs' complaint,
defendant owes no obligation to respond to the allegations of this
paragraph insofar as they state legal conclusions. However, defendant
denies all allegations of this paragraph and avers that, although the
FLSA requires employers to pay overtime compensation at the rate of
one and one-half times their regular rate of pay in a number of
circumstances, such circumstances are not alleged in this action.

Defendant further avers that it paid plaintiffs in accordance with the

1 terms of a collective bargaining agreement negotiated by a union on
2 their behalf.

3 24. Answering the allegations in paragraph 24 of plaintiffs' complaint,
4 defendant owes no obligation to respond to the allegations of this
5 paragraph insofar as they state legal conclusions. However, defendant
6 denies all allegations of this paragraph. Defendant denies it willfully
7 violated the FLSA. Defendant denies that it owes any compensation
8 paid to the plaintiffs in excess of the amounts provided for in the
9 collective bargaining agreement negotiated by a union on their behalf.
10 Defendant further denies that it owes liquidated damages, interest,
11 attorney's fees or the costs of this action.

12 25. Answering the allegations in paragraph 25 of plaintiffs' complaint,
13 defendant owes no obligation to respond to the allegations of this
14 paragraph insofar as they state legal conclusions. However, defendant
15 denies all allegations of this paragraph that it owes any compensation
16 to the plaintiffs in excess of the amounts provided for in the collective
17 bargaining agreement negotiated by a union on their behalf.
18 Defendant avers that it maintains all records in accordance with
19 applicable legal requirements.
20

Prayer for Relief

Defendant denies that the plaintiffs are entitled to any of the items of relief prayed for by them in paragraphs A through E therein.

Affirmative Defenses

1. The plaintiffs fail to state a cause of action on which relief may be granted.
2. The plaintiffs' claims are barred because they have been fully paid for all overtime, if any, that was due.
3. The Complaint is barred in whole or part because plaintiffs' salary, duties and responsibilities meet all requirements of exempt status pursuant to 29 USC § 213 (a)(i) and 29 C.F.R. Part 541, as bona fide executive or administrative or combination exempt workers.
4. Some or all of plaintiffs' claims may be subject to the *de minimis* rule, 29 C.F.R. § 785.47 because they involve insignificant amounts of overtime.
5. The plaintiffs have been paid all compensation to which they are entitled pursuant to the terms of a collective bargaining agreement negotiated by a union on their behalf. Such compensation further includes monies paid for hours not worked, which operate as a credit toward any additional overtime compensation allegedly due.

1 6. All or part of the plaintiffs' claims may be barred by the two-year
2 statute of limitations under the FLSA or such other provisions of the
3 FLSA that limit the time period for which damages may be recovered.

4 7. The Complaint is barred in whole or part because the plaintiffs have
5 failed to allege facts demonstrating that defendant's alleged conduct
6 was willful and merits application of a three-year statute of limitation
7 under the FLSA.

8 8. The Complaint is barred in whole or part because plaintiffs have not
9 alleged facts demonstrating that they are entitled to recover liquidated
10 damages and defendant has at all times classified workers in good
11 faith and with a reasonable ground for believing it was in compliance
12 with the FLSA pursuant to the Portal-to-Portal Act, 29 U.S.C. § 260.

13 9. To the extent that the plaintiffs might be entitled to overtime
14 compensation, the monies already paid to plaintiffs in accordance with
15 the collective bargaining agreement fully compensate them under one
16 or more methods (including traditional half-time fluctuating work
17 week and modified half-time methodologies) of determining the
18 amount of overtime compensation to be paid under the FLSA. The
19 plaintiffs have already received premium overtime pay in excess of
20

1 that required by law even if they were deemed to be nonexempt;
2 therefore, no additional overtime compensation is due.

3 10. The plaintiffs cannot bring this action in a representative capacity
4 because they are not similarly situated to other workers, or to the class
5 of persons performing the job of “Captains” whom they purport to
6 represent in this action. Plaintiffs have pleaded insufficient facts to
7 support a collective action.

8 11. Defendant has acted in good faith conformity with and in reliance on
9 written administrative regulations, order, rulings, approvals, and/or
10 interpretations of the Administrator of the Wage and Hour Division of
11 the U.S. Department of Labor, and/or administrative practices or
12 enforcement policies of said Administrator and, accordingly, the
13 action is barred under the Portal-to-Portal Act, 29 U.S.C. § 259.

14 12. All actions taken and compensation paid to the plaintiffs were done in
15 good faith in accordance with and reliance upon provisions of the
16 Collective Bargaining Agreement applicable to them that state the
17 plaintiffs are exempt from the coverage of the FLSA.

18 13. Plaintiffs voluntarily entered into a collective bargaining agreement
19 stating that they are “exempt” employees. Thus, plaintiffs have
20 admitted, or made a declaration against interest, in the collective

1 bargaining agreement that they are exempt, and are otherwise
2 “estopped” from denying their exempt status to the extent such issues
3 were decided in prior proceedings.

4 14. All actions taken and compensation paid to the plaintiffs were done in
5 good faith in accordance with and reliance upon a ruling by the
6 National Labor Relations Board that employees similarly situated to
7 the plaintiffs are exempt. Plaintiffs union has previously litigated and
8 lost essentially the same or similar issue of exemption at the NLRB.

9 15. All actions taken and compensation paid to the plaintiffs was done in
10 good faith in accordance with and in reliance upon the written advice
11 of counsel that employees similarly situated to the plaintiffs perform
12 exempt duties and are eligible for exempt status under the FLSA.

13 16. Defendant is performing a contract as a government management
14 contractor and stands in the shoes of the federal government. As such
15 defendant is entitled to the benefit of all exemptions, special work
16 schedules (including section 7(k) of the FLSA), and other defenses
17 and provisions arising under the FLSA and related regulations.

18 17. Defendants as agents of the federal government have all such
19 governmental immunities and privileges that can be asserted by the
20 federal government.

1 18. To the extent that individual plaintiffs were compensated annually in
2 excess of \$100,000, those plaintiffs are exempt from the FLSA
3 minimum wage and overtime requirements under the highly
4 compensated employee “short-cut test” provisions of 29 C.F.R.
5 541.601, since they perform “any one or more of the exempt duties or
6 responsibilities” of the executive and/or administrative exemption.

7 **Defendant’s Prayer for Relief**

8 WHEREFORE, having fully answered the allegations contained in
9 plaintiffs’ complaint, defendant prays as follows:

- 10 1. That plaintiffs’ complaint be dismissed with prejudice and without costs;
11 2. That defendant be awarded its costs and attorneys’ fees incurred herein;
12 and
13 3. That defendant be afforded such further and other relief as the Court may
14 deem just and proper in the circumstances.

15 DATED this 29th day of May, 2018

16 Respectfully submitted,

17 SUMMIT LAW GROUP PLLC
18 Attorneys for Mission Support
Alliance, LLC

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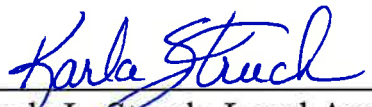
CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 29th day of May, 2018.


Karla L. Struck, Legal Assistant